IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

MFA (G&W).No. 80 of 2007()

GOP.No.111/2006 of VI ADDL.DISTRICT COURT, ERNAKULAM
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APPELLANT: PETITIONER

SUHARABEEVI, W/O. ABDUL RAZAK,
KIZHAKKEDATH, VIDANGARA, EDAKKATTUVAYAL VILLAGE,
KANAYANNUR TALUK, ERNAKULAM DISTRICT.

BY ADV. SRI.M.R.NANDAKUMAR

RESPONDENTS: OPP. PARTIES

NIL

THIS MISC. FIRST APPEAL HAVING COME UP FOR ADMISSION ON 13/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.(G&W)No.80 OF 2007

Dated 13th June, 2007

JUDGMENT

Koshy,J.

Appellant filed an application under sections 7,9 and 10 of the Guardian & Wards Act for appointing herself as guardian for encumbering the property of the minor as security for getting a loan. It is her case that her husband is in Quatar and she is doing rubber business. Now, she wants to extend her business and hence a loan is required. It is further submitted that she is getting rental income and her husband is working in Quatar getting 1,500 Quatar Riyals and Annexure C certificate was produced. According to the court below the appellant and family are residing in the scheduled property and there is no other landed property. It was not proved that her husband has employment. The monthly instalment to be paid towards loan will be Rs.6,000/= and according to the court, from the income she will be unable to pay the same. Therefore, in the interest of minor her application cannot be allowed. It is now contended that the court did not consider the fact that her husband was employed in Quatar and she had other buildings on rent and getting rental income of Rs.5,000/= per month. From the business she is getting Rs.3,000/= per month. But, no evidence was adduced

before the District Court. She could have filed a joint application with her husband. That was not done. Her husband was not made a party either as petitioner or as respondent. But, husband filed a statement showing that he has no objection to appoint her as guardian. However, her contentions have to be proved. Evidence has to be adduced to the satisfaction of the District Court to prove that interest of the minor will not be prejudiced, appellant is actually conducting the business and she is having sufficient income from that, she is receiving the rental income and correctness of the income of the husband etc. Hence, in the interest of justice, we remand the matter so that appellant can adduce evidence to satisfy the court the necessity for appointing her as guardian of the minor and interest of the minor will not be prejudiced by giving property as security for obtaining the loan.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

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